IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8500 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESHBHAI PRATAPRAI PAREKH

Versus

RAHI KAMLESHBHAI PAREKH

Appearance:

1. Special Civil Application No. 8500 of 2002

MR JB PARDIWALA with MR P.M.BHATT for Petitioner No. 1

MR MM TIRMIZI for Respondent No. 1

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 10/10/2002

ORAL JUDGEMENT

Rule. Mr. M.M.Tirmizi, learned advocate appears and waives service of notice of rule on behalf of the Respondent. Since consensus has been arrived at between

the parties for a particular arrangement, and in view of peculiar facts and circumstances emerging from the record of the case, and in larger interest of the parties, the matter is taken up for final disposal today.

2. In this petition which is filed under Article 227 of the Constitution of India, the petitioner seeks to challenge the common order dated August 31, 2001 recorded below applications Exhibits-4 and 13 in Civil Misc. Application (Guardianship) No. 122 of 2000 by the learned 2nd Joint District Judge, Panchmahals at Godhra, by which both the applications filed by the petitioner came to be rejected. Exhibit-4 is an application seeking permission to meet and visit minor daughter Kavina at regular intervals whereas Exhibit-13 is an application wherein it is prayed that pending final disposal of the proceedings under the Guardianship & Wards Act ('the Act' for short), the interim custody of minor Kavina be given to the petitioner as father and natural guardian.

3. The petitioner aggrieved thereby, approached this Court initially by filing Civil Revision Application No. 1160 of 2001. The Court taking up Civil Revision Application at that point of time made all possible efforts for reconciliation between the petitioner and the respondent who are husband and wife, but the efforts did not yield any result. In the meantime, in view of the recent amendment in Section 115 of the Code of Civil Procedure, 1908, Civil Revision Application No. 1160 of 2001 was withdrawn by the petitioner with a liberty to file petition under Article 227 of the Constitution of India. This Court (Coram : D.P.Buch,J), vide order dated August 12, 2002 passed the following order:

> "Learned advocate for the petitioner seeks permission to withdraw this Revision Application on the ground that the revision may not be maintainable in view of the amendment in Section 115 of the Code of Civil Procedure, 1908. Permission is granted. This Revision Application has been admitted by order dated 19.1.2002. Since the petitioner is withdrawing this revision, the same is disposed of accordingly. Notice discharged.
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> At this stage, learned advocate for the petitioner states that the petitioner should be at liberty to file petition under Article 227 of the Constitution of India. Petitioner may file such application, if it is legally permissible."

4. In view of the aforesaid order passed by this Court, petitioner approached this Court by filing the present Special Civil Application No. 8500 of 2002. This Court (Coram : Jayant Patel,J) vide order dated August 23, 2002, passed the following order:

> "Mr. P.M.Bhatt, learned Counsel appearing for the petitioner states that the petitioner is not pressing for interim custody at this stage, but is desirous for visit to the child for some time by way of regular access. In view of this statement, notice returnable on 9th September, 2002. Direct service is permitted."

5. The parties before this Court are husband and wife. The marriage of the petitioner with the respondent was solemnized on June 2, 1997 and out of the wed-lock a daughter by name Kavina was born on July 21, 1998. Prima facie, it appears from the record of the case that on account of some maladjustment and marital discord it was not possible for the two spouses to leave together under one roof. Accordingly respondent left the matrimonial home after about one year from the date of birth of minor Kavina along with Kavina and started residing at her parents' house at Devgadh Baria. Later on, for the purpose of education of minor Kavina, respondent started residing at Godhra with her brother. Petitioner, as father of minor Kavina initiated proceedings under the Act by preferring Civil Misc. Application (Guardianship) No. 122 of 2000 along with two applications Exhibits 4 and 13 to which reference is made in earlier paragraph. Petitioner has restricted his prayer only to the extent that he be permitted to visit and meet minor Kavina at periodical intervals.

6. Mr. J.B.Pardiwala learned advocate for the petitioner states that the petitioner, who is the father of minor Kavina, after long years of litigation, has not yet got even a right to see his child for some time at regular intervals. According to him, a humanitarian approach is necessary for solving the problem , and therefore it would be just and proper to permit the petitioner to meet minor Kavina once in a week at the house of the respondent for a period of 2 to 3 hours. Mr. M.M.Tirmizi, learned advocate for the respondent has opposed this prayer and has submitted that at the most the petitioner can be allowed to meet minor Kavina once in two months.

7. As the dispute is in a very narrow compass as regards the time interval in which the petitioner should

meet minor Kavina, it was suggested by this Court that parties should amicably reach to some consensus. For this purpose both the spouses were asked to remain present before this Court, and accordingly both the petitioner and the respondent with their respective advocates remained present in the Court today.

8. A consensus has been arrived at between the parties that petitioner shall visit the house of respondent once in a month on last Saturday of the week and meet minor Kavina. It is also agreed upon that petitioner shall reach the house of the respondent at 6:00 pm in the evening and remain with minor Kavina upto 9:00 pm. However, it is suggested by respondent that though, she is, at present residing at Godhra, she would not like the petitioner to visit Godhra to meet minor Kavina. She suggested that she will take minor Kavina to Devgadh Baria once in a month on saturday of the last week to meet her father. Petitioner has agreed to go to Devgadh Baria and visit minor Kavina.

9. In view of what is stated above, and with the consensus arrived at between the parties, it would be just and proper in the interest of justice to issue the following directions safeguarding the interest of both the parties and more particularly minor Kavina:

i) The Respondent shall permit the petitioner to visit her parent's house at Devgadh Baria and meet minor Kavina once in a month on Saturday of the last week between 6:00 pm to 9:00 pm. The petitioner shall not take minor Kavina any where outside and shall confine the meeting only to the house of the respondent's parent at Devgadh Baria.

ii) The Petitioner is directed to consider the interest of the child as paramount and do nothing which would be adverse to the child's interest or affect the child physically or mentally in any manner. At the same time, the respondent is also directed to extend full cooperation to make this arrangement more meaningful and fruitful.

iii) If the minor's welfare is jeopardized seriously by any act of willful neglect or otherwise of the petitioner, it shall be open to the respondent to move this Court with appropriate application.

iv) In case this order requires modification in the actual working on account of difficulties that

may be cropped up, it is open to the parties to move this Court for such change, as may be deemed fit to this Court by filing review application.

10. Both the parties with their respective advocates were present before this Court when the matter was finally heard on 9.10.2002. I cautioned both the parties that in case of any sustained allegation against the interest of the child, the matter would be seriously dealt with. The arrangement arrived at shall continue till the final disposal of the proceedings pending in the Court of the learned 2nd Joint District Judge, Panchmahal, Godhra under the Act.

11. The learned 2nd Joint District Judge, Panchmahals at Godhra before whom Civil Misc. Application (Guardianship) No. 122 of 2000 is pending for final disposal, wherein the evidence is already commenced, is hereby directed to give top priority to the hearing of the matter and decide the same finally as early as possible. It is expected and directed that both the parties shall cooperate with the learned Judge in expeditious disposal of the matter.

13. Before concluding, I must express my earnest hope that the two spouses would at least for the sake of happiness of minor Kavina, if for no other reason, forget the past and turn a new leaf in their family life, so that they can provide to minor Kavina a happy domestic home, to which minor Kavina must be considered to be justly entitled. The requirement of indispensable tolerance and mental understanding in matrimonial life is its basic foundation. The two spouses before me who both are educated and well cultured and belong to a respectable and reputed families, must realise that reasonable wear & tear, and normal jars & shocks of ordinary married life has to be put up within the larger interest of their own happiness and of the healthy, normal growth and development of their offspring, whom destiny has entrusted to their joint parental care. Incompatibility of temperament has to be endeavoured to be disciplined into compatibility and not to be magnified by abnormal impulses or impulsive desires and passions. Both the parents have, therefore, to cooperate and work harmoniously for their child who should feel proud of their parents and of their home, bearing in mind that their child has a right to expect from their parents such a home.

13. In view of the aforesaid observations and directions, petition stands disposed of with no order as

to costs.

Rule is made absolute to the aforesaid extent in terms of the directions issued in this judgement.

(A.M.Kapadia,J)

Jayanti*